

REMARKS

Claims 2 to 7, 9 to 11, 18, 23 to 31, 33 to 35, 37, 38, 40, and 41 remain pending.

Claims 2 to 7, 9 to 11, 18, 23 to 31, 33 to 35, 37, 38, 40, and 41 have been rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,224,851 B1 to Bara et al. (Bara) in view of the OSHA article and U.S. Patent No. 2,859,085 to Morrisou (Morissou). The Action stated that Bara disclosed a cosmetic water-in-oil emulsion foundation having 20 wt% of perfluoromethylcyclopentane (Example 2). The Action also stated that Bara disclosed an oil-in-water emulsion at col. 6, lines 11 to 25. The Action also stated at col. 3, lines 21 to 26 that perfluoromethylcyclopentane can be replaced by ethoxynonafluorobutane, another name for ethyl perfluorobutyl ether.

The rejection of claims 2 to 7, 9 to 11, 18, 23 to 31, 33 to 35, 37, 38, 40, and 41 under 35 U.S.C. 103(a) over Bara in view of the OSHA article and Morrisou is not well taken. Independent claims 38, 40, and 41 each require a composition that has the following: (1) be in cream form and have a viscosity of from about 20,000 cps to about 1,500,000 cps, (2) a volatile compound of one or more perfluorobutyl ethers having a vapor pressure of about 20 mbar to about 500 mbar at 25 degrees C and a boiling point from about 45 degrees C to about 85 degrees C, (3) an oil-in-water emulsion having an emulsifier and an oil phase and a water phase, and (4) the volatile compound not being totally dissolved in either the oil phase or the water phase. Bara does not specifically disclose or suggest a composition that meets the above requirements of the

Further, Example 2 of Bara does not disclose a composition that meets the requirements of the claimed invention as evidenced in the discussion below and in the Third Declaration.

Example 2 of Bara, which relates to a foundation cosmetic composition, has been reproduced to demonstrate that it does not disclose a composition that exhibits renewal or return to its original appearance after being disturbed and placed in a sealed container. Example 2 was substantially reproduced as set forth in the Third Declaration. The composition had the consistency of a soft cream. The composition was scooped into a jar in which it settled to present a substantially planar surface (Figure 1) upon sealing of the lid. The surface of the composition was then disturbed with a finger (Figure 2) and the lid reapplied. After 67 minutes, the surface of the composition was substantially unchanged (Figure 3). Thus, the composition of Example 2 of Bara is not self-renewing and clearly does not fall within the scope of the claimed invention.

As further evidence of the criticality of the feature of renewal in systems and methods of the claimed invention, Applicant has prepared a cosmetic composition in accordance with the claimed invention and tested it for evidence of renewal (First Declaration). The following relates the features of the cosmetic composition tested to features of independent claims 38, 40, and 41: a viscosity of 975,000 cps (20,000 cps to 1,500,000 cps), took the form of an oil-in-water emulsion, had sodium methyl cocoyl taurate and reaction products of potassium hydroxide and the acids in Part B (emulsifiers), had a volatile compound of methoxynonafluorobutane (a perfluorobutyl ether having a vapor pressure from about 20 mbar to about 500 mbar at 25 degrees C and a boiling point from about 45 degrees C to about 85 degrees C), was present at 3.3783 wt% (present in an amount

effective to renew the textured surface appearance after disturbance), was placed in a storage container/jar with lid (a non-aerosol container with a cap effective to seal against escape of pressure), and took a physical form and consistency of a cream (present in cream form).

The composition described in the First Declaration was scooped into a jar in which it settled to present a substantially planar surface (Figure 1). The surface of the composition was then disturbed with a finger (Figure 2) and the lid applied to the jar. After 45 minutes, the lid was removed to reveal that the surface of the composition had substantially renewed itself (Figure 3). Thus, the composition in the First Declaration demonstrated the efficacy of the feature of renewal.

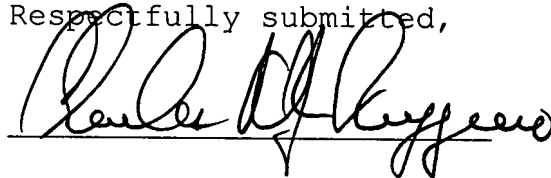
As further evidence of the criticality of the feature of renewal in systems and methods of the claimed invention, Applicant has prepared a conventional cosmetic composition and tested it for evidence of renewal (Second Declaration). The conventional composition was prepared with ingredients commonly employed in cosmetic compositions but without a volatile compound, such as a perfluorobutyl ether. The conventional composition was substantially reproduced as set forth in the Second Declaration. The composition had the consistency of a soft cream. The composition was scooped into a jar in which it settled to present a substantially planar surface (Figure 1). The surface of the composition was then disturbed with a finger (Figure 2) and a lid applied to the jar. After 45 minutes, the surface of the composition was substantially unchanged (Figure 3). Thus, the conventional composition was not self-renewing and clearly did not fall with the scope of the claimed invention.

In summary, it is apparent from the foregoing that Bara does not appreciate the feature of renewal of the claimed invention. This lack of appreciation was evidenced by the negative renewal tests carried out on compositions specifically disclosed in those cited references. It was also apparent that a conventional composition of the indicated formulation did not exhibit renewal in accordance with the claimed invention. It was further apparent that systems and methods that exhibited renewal could be prepared in accordance with the claimed invention.

Reconsideration of claims 2 to 7, 9 to 11, 18, 23 to 31, 33 to 35, 37, 38, 40, and 41 is deemed warranted in view of the foregoing, and allowance of said claims is earnestly solicited.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles N. J. Ruggiero", written over a horizontal line.

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